

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**Nilda GUTIERREZ, Linda MORGAN,
Wayne BROWN and Krista MARSHALL,**

**Individually and as
Class Representatives,**

Plaintiffs,

V.

JOHNSON & JOHNSON,

Defendant.

**PLAINTIFFS' MOTION FOR LEAVE TO REPLY TO DEFENDANTS'
RESPONSE TO MADDEN DECLARATION**

Bennet D. Zurofsky (BZ 2005)
17 Academy Street – Suite 1010
Newark, New Jersey 07102
(973) 642-0885
bzurofsky@zurofskylaw.com

Scott Alan George (SG 0897)
Seeger Weiss LLP
550 B road Street, Ste. 920
Newark, NJ 07102
(973) 639-9100
sgeorge@seegerweiss.com

U.W. Clemon, Esq. (*pro hac vice*)
White, Arnold & Dowd
2025 Third Avenue, North
Birmingham, AL 35203
(205) 241-3124

Cyrus Mehri (*pro hac vice*)
Woodley B. Osborne (*pro hac vice*)
Janelle M. Carter (*pro hac vice*)
Mehri & Skalet, PLLC
1250 Connecticut Avenue, N.W.
Washington, DC 20036
(202) 822-5100

Thomas J. Henderson (*pro hac vice*)
Henderson Law Firm, PLLC
1666 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 587-5687

Steven M. Sprenger (*pro hac vice*)
Bryce M. Miller (*pro hac vice*)
Sprenger & Lang, PLLC
1400 Eye Street, NW, Ste. 500
Washington, D.C. 20005
(202) 265-8010

COUNSEL FOR PLAINTIFFS AND THE CLASS

Plaintiffs respectfully request that this Court grant them leave to submit a Reply to Defendants' Response to Madden Declaration Submitted On July 8, 2010 ("D. Response.").

In response to the Court's notice that it wanted to hear from the parties at argument on the subject of the manageability of the case, including "an appropriate methodology for calculating monetary damages," Plaintiffs had their statistical expert prepare a declaration on precisely that subject and provided it to the Court at argument.

At the conclusion of the argument and in a subsequent letter, the Court permitted Defendants leave to submit a fifteen-page response by July 16, 2010. Defendants submitted their Response.

However, rather than addressing the question of "an appropriate methodology for calculating monetary damages," requested by the Court and addressed in the Madden Declaration, Defendants' Response comprises 13 pages of argument which misstates the law regarding stage II proceedings in the bifurcated pattern or practice trial model in *Teamsters v. United States*, 431 U.S. 324, 362 (1977), and simply repeats erroneous and misleading statements on the separate question of commonality, including reiterating the very same statistical arguments it made on that subject at oral argument.

The Madden declaration did not discuss legal authority, so Defendants'

Response represents additional briefing to which Plaintiffs should have the opportunity to respond and to correct misstatements. The Defendants' erroneous and misleading arguments on the different question of commonality have now been made to the Court twice without the opportunity to rebut them. Thus, Plaintiffs request leave to rebut them briefly here.

WHEREFORE, Plaintiffs respectfully request leave to file the attached succinct Reply to Defendants' Response to Madden Declaration Submitted On July 8, 2010.

Respectfully submitted,

/s/ Scott Alan George

Scott Alan George (SG 0897)
Seeger Weiss LLP
550 B road Street, Ste. 920
Newark, NJ 07102
(973) 639-9100
sgeorge@seegerweiss.com

Bennet D. Zurofsky (BZ 2005)
17 Academy Street – Suite 1010
Newark, New Jersey 07102
973-642-0885
bzurofsky@zurofskylaw.com

U.W. Clemon, Esq. (*pro hac vice*)
White, Arnold & Dowd
2025 Third Avenue, North
Birmingham, AL 35203
205-241-3124

Cyrus Mehri (*pro hac vice*)
Woodley B. Osborne (*pro hac vice*)
Janelle M. Carter (*pro hac vice*)
Mehri & Skalet, PLLC
1250 Connecticut Avenue, N.W.
Suite 300
Washington, DC 20036
(202) 822-5100

Thomas J. Henderson (*pro hac vice*)
Henderson Law Firm, PLLC
1666 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 587-5687
tjh@hendersonfirm.net

Steven M. Sprenger (*pro hac vice*)
Bryce M. Miller (*pro hac vice*)
Sprenger & Lang, PLLC
1400 Eye Street, NW, Ste. 500
Washington, D.C. 20005

COUNSEL FOR PLAINTIFFS AND THE CLASS

Dated: July 21, 2010